

State of South Dakota

EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

400M0673

SENATE ENGROSSED NO. **SB 207** - 01/31/2006

Introduced by: The Committee on Health and Human Services at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the sale,
2 purchasing, and possession of products containing pseudoephedrine or ephedrine.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-20D-1 be amended to read as follows:

5 34-20D-1. No retailer may sell, in a single transaction, more than two packages containing
6 pseudoephedrine or ephedrine as an active ingredient. For purposes of this chapter, the term,
7 retailer, means any person who sells merchandise at retail and from whom original packages of
8 nonprescription drugs are sold or taken to be sold at retail and who is licensed by the Board of
9 Pharmacy to sell nonprescription drugs. This restriction does not apply to any sale made
10 pursuant to a valid prescription drug order prescribed by a practitioner as defined in § 36-11-2
11 with appropriate authority. Any retailer or any employee of a retailer who sells packages
12 containing pseudoephedrine or ephedrine in violation of this section is guilty of a Class 1
13 misdemeanor.

14 Section 2. That § 34-20D-2 be amended to read as follows:

15 34-20D-2. No person may purchase, in a single transaction, more than two packages
16 containing pseudoephedrine or ephedrine as an active ingredient. This restriction does not apply



1 to purchases made with a valid prescription drug order prescribed by a practitioner as defined
2 in § 36-11-2 with appropriate authority. Any person who purchases packages containing
3 pseudoephedrine or ephedrine in violation of this section is guilty of a Class 1 misdemeanor.

4 Section 3. That § 34-20D-3 be amended to read as follows:

5 34-20D-3. Any retailer who offers for sale a product containing pseudoephedrine ~~as the~~
6 ~~product's sole~~ or ephedrine as an active ingredient shall display and offer the product for sale,
7 except as otherwise provided, behind a counter where the public is not permitted or in a locked
8 case so that a customer wanting access to the package must ask a store employee for assistance.
9 The retailer may display or offer for sale without restriction a product containing
10 pseudoephedrine ~~as the sole~~ or ephedrine as an active ingredient if the product is displayed using
11 any type of anti-theft device system including an electronic anti-theft device system that utilizes
12 a product tag and detection alarm which prevents the theft of the product. ~~This section does not~~
13 ~~apply to any package of a product containing pseudoephedrine as the product's sole active~~
14 ~~ingredient which is in liquid, liquid cap, or gel cap form or any package of a product containing~~
15 ~~pseudoephedrine as the product's sole active ingredient which is primarily intended for~~
16 ~~administration to children under twelve years of age, according to the product's label, regardless~~
17 ~~of whether the product is in liquid or solid form.~~

18 Section 4. That § 34-20D-4 be repealed.

19 ~~34-20D-4. Any retailer who offers for sale any combination product containing~~
20 ~~pseudoephedrine or ephedrine as an active ingredient, any package of a product containing~~
21 ~~pseudoephedrine as the product's sole active ingredient which is in liquid, liquid cap, or gel cap~~
22 ~~form or any package of a product containing pseudoephedrine as the product's sole active~~
23 ~~ingredient which is primarily intended for administration to children under twelve years of age,~~
24 ~~according to the product's label, regardless of whether the product is in liquid or solid form,~~

~~shall display and offer such product for sale, except as otherwise provided, within twenty feet of a counter which allows the attendant to view the products in an unobstructed manner. A retailer may display or offer for sale without restriction any of the products listed in this section if the product is displayed using any type of anti-theft device system, including an electronic anti-theft device system that utilizes a product tag and detection alarm which prevents the theft of the product.~~

Section 5. That § 34-20D-5 be amended to read as follows:

34-20D-5. A retailer shall post notice at the location where a product containing pseudoephedrine or ephedrine as an active ingredient is displayed or offered for sale stating the following:

South Dakota law prohibits the sale or purchase of more than two packages containing pseudoephedrine or ephedrine as an active ingredient unless sold or purchased with a valid prescription drug order prescribed by a practitioner as defined in § 36-11-2 with appropriate authority.

Section 6. That chapter 34-20D be amended by adding thereto a NEW SECTION to read as follows:

If offering for sale a product containing pseudoephedrine or ephedrine as an active ingredient, a retailer shall, before making such a sale, require an identification of the person purchasing the product containing pseudoephedrine or ephedrine. For purposes of this section, the term, identification, means a document issued by a governmental agency which contains a description of the person or a photograph of the person, or both, and gives the person's date of birth, such as a driver's license, passport, or military identification card.

Section 7. That chapter 34-20D be amended by adding thereto a NEW SECTION to read as follows:

1 No person may possess, receive, or otherwise acquire more than nine grams of ephedrine
2 base, pseudoephedrine base, or phenylpropanolamine base in any product, mixture, or
3 preparation within any thirty-day period. This restriction does not apply to any quantity of
4 product, mixture, or preparation obtained pursuant to a valid prescription drug order prescribed
5 by a practitioner as defined in § 36-11-2 with appropriate authority.

6 Possession of more than nine grams of a drug product containing more than nine grams of
7 ephedrine base, pseudoephedrine base, or phenylpropanolamine base constitutes a rebuttable
8 presumption of the intent to use the product as a precursor to methamphetamine or another
9 controlled substance. This rebuttable presumption does not apply to:

- 10 (1) A retail distributor of drug products;
- 11 (2) A wholesale drug distributor, or its agents;
- 12 (3) A manufacturer of drug products, or its agents;
- 13 (4) A pharmacist licensed by the Board of Pharmacy; or
- 14 (5) A licensed health care professional possessing the drug products in the course of
15 carrying out the profession.

16 Any violation of this section is a Class 1 misdemeanor.